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C O N F I D E N T I A L JERUSALEM 000386

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NEA FOR FRONT OFFICE, NSC FOR ABRAMS/DORAN/MUSTAFA

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TAGS: [ASEC](#) [IS](#) [KDEM](#) [KPAL](#) [KWBG](#) [PBTS](#) [PGOV](#) [PREL](#)  
SUBJECT: PA BASIC LAW: SEPERATION OF POWERS AND SECURITY  
FUNCTIONS

¶1. (C) SUMMARY: The PA Basic Law and Presidential Decrees are the primary legal bases for government formation and control of the PA Security Forces (PASF). While the law is clear on some issues such as the selection of the Prime Minister and the Council of Ministers, the Basic Law does not say anything about when the President can dissolve the PLC or call for new elections. The President has direct authority over General Intelligence and Presidential Security, but also maintains indirect authority over the other security services through provisions of the Basic Law and various Presidential Decrees. In practice, operational control of the PASF has always been more of a political than a legal question. END SUMMARY

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Government Formation  
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¶2. (SBU) Under Article 45 of the Basic Law, the President selects a Prime Minister designee and tasks him with forming a government. The designee has 3 weeks to form a cabinet with the possibility of a two-week extension. After the designee has formed a government, it is presented to the PLC for a vote of confidence. If the cabinet receives an absolute majority, a government is formed, if not the President must select a new Prime Minister designee and the process begins again.

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Prime Ministerial Powers  
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¶3. (SBU) The Prime Minister serves at the will of the President as mandated by Article 45, which gives the President the right to dismiss the Prime Minister or convene the Council of Ministers at any time. The Prime Minister's primary function is to oversee the work of the Council of Ministers.

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Dismissing the Cabinet or PLC  
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¶4. (SBU) Effectively, the President can dismiss the Cabinet by firing his Prime Minister. The Basic Law makes no mention of whether the President can dismiss the PLC and there is no other existing legal basis for such a move. Notably, PLC Speaker Rawhi Fattuh proposed an amendment to the Basic Law on January 21 to give the President the power to dissolve the PLC. (NOTE: At the time the amendment failed to garner the support of enough PLC members to bring the measure to debate. It is unlikely that the amendment will move forward at this stage. END NOTE) Article 2 of the PA Election Law specifies that PLC elections shall be held every four years. (NOTE:

Presidential Chief of Staff Rafiq Husseini told Consul General that the President's legal advisor believes it may be possible for the President to dissolve the PLC under certain circumstances. See Septel. END NOTE)

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Control of the PASF  
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15. (C) Control of the PASF has always been more of a political than a legal question. In April 2005, President Abbas issued a decree unifying all the PASF under the Interior Minister, except General Intelligence, which remains under Presidential authority pursuant to the General Intelligence Law. The President also exercises direct authority over the Presidential Security force. In addition, Article 39 of the Basic Law, which specifies that the President is the Commander-in-Chief of all PASF, gives the President indirect authority over all the security forces. Under the 2003 Amendment to the Basic Law, however, operational control of the PASF was theoretically divided between "external" functions (National Security Force, Presidential Security and General Intelligence (Mukhabarat)), under Presidential control, and "internal" functions (Preventive Security, Civil Police, and Civil Defense), under Prime Ministerial control. As Prime Minister, Abu Mazen briefly assumed control over the three internal security apparatuses, while then President Arafat retained direct control over the National Security Force and General Intelligence. While President Abbas expanded the powers of the Interior Minister with his April 2005 decree, Nasir Yusif has always reported in practice directly to the President, rather than the Prime Minister.

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Passing a Law,  
Amending the Basic Law  
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16. (C) Passing a law in the PLC requires a simple majority, 67 votes, and approval by the President. If the President vetoes legislation, it can be overridden with a two-thirds majority of the PLC. With 76 members, Hamas will have no trouble advancing its agenda through the legislature. Amending the Basic Law requires a two-thirds majority of the PLC, 87 members. With 4 allied independents and the likely support of the 3 PFLP members, Hamas is four votes away from having enough votes to change the Basic Law. The President has the power to issue presidential decrees, which have the force of law. However, any such decree does not have the force to override the Basic Law.

WALLES